

Chief Judge Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

HENRY ROSENAU,

Defendant.

No. CR06-157MJP

DEFENDANT'S PROPOSED JURY
INSTRUCTION WITH CITATION RE:
PRIOR TESTIMONY OF DUSTIN
HAUGEN

PROPOSED JURY INSTRUCTIONS WITH CITATIONS

The Defendant, by and through his counsel of record, Craig Platt, respectfully submits the following proposed jury instructions. The Defense has excluded the Court's preliminary instructions as requested aside from those for which the Defense seeks modification.

DEFENDANT'S PROPOSED JURY INSTRUCTIONS
WITH CITATIONS/ROSENAU-1
No. CR06-157MJP

PLATT & BUESCHER
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2 Respectfully submitted this 10th day of July, 2012.
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5 Respectfully submitted,
6 PLATT & BUESCHER
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9 s/Craig Platt
10 Craig Platt
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45 DEFENDANT'S PROPOSED JURY INSTRUCTIONS
46 WITH CITATIONS/ROSENAU-2
47 No. CR06-157MJP
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2 **NO.** _____
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5 When a person is unavailable to testify at trial, the prior testimony of that person may be used at
6 the trial. The prior testimony is the sworn testimony of a witness taken before trial. The witness
7 is placed under oath to tell the truth and lawyers for each party may ask questions. The questions
8 and answers are recorded.
9

10 The prior testimony of Dustin Haugen, which was taken on April 24, 2012, is about to be
11 presented to you. You should consider this prior testimony in the same way that you consider the
12 testimony of the witnesses who have appeared before you. Do not place any significance on the
13 behavior or tone of voice of any person reading the questions or answers.
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41 Ninth Circuit Model Criminal Jury Instruction 2.6 (modified for prior testimony).
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45 DEFENDANT'S PROPOSED JURY INSTRUCTIONS
46 WITH CITATIONS/ROSENAU-3
47 No. CR06-157MJP
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1 NO. _____

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3 Live testimony gives the jury (or the trier of fact) the opportunity to observe the demeanor of the
4 witness while testifying. Through live testimony, persons who are to decide upon the evidence
5 have an opportunity to observe the quality, age, education, understanding, behavior, and
6 inclination of the witness. Transcripts of a witness's prior testimony, even when subject to prior
7 cross-examination, do not offer any such advantage, because all persons appear alike, when their
8 testimony is reduced to writing. Therefore, do not place any significance on the behavior or tone
9 of voice of any person reading the questions or answers.

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33 *United States v. Yida*, 498 F.3d 945, 950 (9th Cir. 2007) ("Underlying both the constitutional
34 principles and the rules of evidence is a preference for live testimony. Live testimony gives the
35 jury (or other trier of fact) the opportunity to observe the demeanor of the witness while
36 testifying. William Blackstone long ago recognized this virtue of the right to confrontation,
37 stressing that through live testimony, 'and this [procedure] only, the persons who are to decide
38 upon the evidence have an opportunity of observing the quality, age, education, understanding,
39 behavior, and inclinations of the witness.' 3 William Blackstone, *Commentaries on the Laws of*
40 *England* 373-74 (1768). Transcripts of a witness's prior testimony, even when subject to prior
41 cross-examination, do not offer any such advantage, because 'all persons must appear alike,
42 when their [testimony] is reduced to writing.' *Id.* at 374."); Ninth Circuit Model Criminal Jury
43 Instruction 2.6 (last sentence).

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45 DEFENDANT'S PROPOSED JURY INSTRUCTIONS
46 WITH CITATIONS/ROSENAU-4
47 No. CR06-157MJP
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NO. _____

You have been read the prior testimony of Dustin Haugen, a witness who

received benefits and favored treatment from the government in connection with this case;

admitted being an accomplice to the crime charged. An accomplice is one who voluntarily and intentionally joins with another person in committing a crime;

pleaded guilty to a crime arising out of the same events for which the defendant is on trial. This guilty plea is not evidence against the defendant, and you may consider it only in determining this witness's believability.

For these reasons, in evaluating the prior testimony of Dustin Haugen, you should consider the extent to which or whether his prior testimony may have been influenced by any of these factors. In addition, you should examine the testimony of Dustin Haugen with greater caution than that of other witnesses.

Ninth Circuit Model Criminal Jury Instruction 4.9 (modified)

CERTIFICATE OF SERVICE

I hereby certify that on 7/10/2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the plaintiff.

s/Connor Tasoff
Connor Tasoff
Legal Secretary
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DEFENDANT'S PROPOSED JURY INSTRUCTIONS
WITH CITATIONS/ROSENAU-6
No. CR06-157MJP

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